

आयकर अपीलीय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE

BEFORE SHRI ANIL CHATURVEDI,  
ACCOUNTANT MEMBER

आयकर अपील सं / ITA No.1147/PUN/2017

निर्धारण वर्ष / Assessment Year : 2008-09

Minilec India Private Limited,  
1073/1-2-3, At & Post Pirangut,  
Pune – 412 111.

..... अपीलार्थी /  
Appellant

PAN : AABCM2682E

बनाम v/s

The Dy.Commissioner of Income Tax,  
Circle – 11(2), Pune.

..... प्रत्यर्थी /  
Respondent

Assessee by : Shri Kishore Phadke.

Revenue by : Shri Shashank Deogadkar

सुनवाई की तारीख / Date of Hearing : 07.08.2019	घोषणा की तारीख / Date of Pronouncement: 16.10.2019
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आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. This appeal filed by assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – 1, Pune dated 16.04.2012 for A.Y. 2008-09.

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a company stated to be engaged in the business of manufacturing of Electronic products and Bio-Diesel. Assessee electronically filed its return of income for A.Y. 2008-09 on 21.04.2009

declaring total income at Rs.31,92,770/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.31.12.2010 and the total income was determined at Rs.49,43,423/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dated 16.04.2012 (in appeal No.PN/CIT(A)-I/DCIT Cir.11(2) Pn/345/10-11) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and has raised the following grounds :

*“1. The learned AO and learned CIT(A) erred in law and on facts in not granting the deduction of employees' contribution to Provident fund, amounting to Rs. 4,81,077/- u/s 36(1)(va) of the ITA, 1961, without appreciating the fact that the said payment was within the due date specified by the said Act, considering the grace period for payment.*

*2. The learned CIT(A) erred in law and on facts in sustaining the disallowance of Rs.1,20,573/-, u/s 36(1)(va) on account of delayed payment of Employee's Contribution to Provident fund without appreciating the fact that it was paid before the due date of filing of Return of Income. The learned AO ought to have granted deduction u/s 43B of the ITA, 1961.*

*3. The learned AO erred in law and on facts in making and learned CIT(A) erred in law and on facts in confirming the disallowance of Rs. 90,105/- pertaining to expenditure on exempt dividend income, u/s 14A of the ITA, 1961 r.w.r. 8D the IT Rules, 1962. The learned AO ought to have appreciated that the appellant has sufficient own funds for making the investments which generate exempt income.*

*4. Without prejudice to ground no. 4 above, the learned AO and learned CIT(A) erred in law and on facts in not restricting the disallowance u/s 14A to the exempt income earned i.e. Rs. 81,967/-*

*5. The learned CIT(A) erred in law and on facts in sustaining the disallowance amounting to Rs. 2,00,947/- on account of interest, on the analogy that the borrowed funds are diverted for non business consideration. The learned CIT(A) ought to have appreciated that non-interest bearing funds are far more than non-interest bearing advances, and thus no disallowance is warranted.”*

3. Before me, at the outset, Ld.A.R. submitted that he does not wish to press ground Nos.3 to 5. Hence, the same are dismissed as not pressed. The remaining grounds for adjudication i.e., grounds 1 and 2 being inter-connected are considered together.

4. The case file reveals that there is a delay of 1644 days in filing the present appeal. Ld.A.R. filed the sworn affidavit of Manager (Accounts) of assessee company stating the reasons for the delay in filing the appeal. He has also filed the affidavit of the Managing Director of the company explaining the reasons which has led to the delay in filing the present appeal. He further submitted that the delay in filing the present appeal was not on account of malafide intention. He submitted that there was frequent turnover of employees handling taxation related matters and due to multiplicity of tax proceedings for A.Y. 2008-09, confusion prevailed over the assessee's staff. In support of the contention of multiplicity of proceedings, he pointed to the Chart of events showing various proceedings at different levels. He further submitted that assessee had filed all the appeals before the appropriate authorities within the specified time and it was the only captioned appeal where there was delay. He further submitted that when substantial justice was pitted against technicality, the cause of justice should be preferred and for the aforesaid proposition, he also placed reliance on certain decisions. He prayed that the delay in filing the appeal be condoned. The Ld. D.R. objected to the prayer of the Ld.A.R. seeking condonation of delay. He submitted that the reasons stated for the delay in the affidavit are not at all sustainable and he also relied on the decision in the case of Vama Apparels (India) (P.) Ltd., Vs. ACIT reported in (2019) 102 taxmann.com 398 (Bom). He thus seriously objected to the application for condonation of delay.

5. Ld.A.R. in the rejoinder on the merits of the ground in appeal, submitted that there was delay in depositing of employees

contribution of P.F., but however the amounts were deposited with the appropriate authorities before the filing of return of income. In such a situation, he submitted that the issue is covered in assessee's favour by the decision of Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil reported in 368 ITR 749. He therefore submitted that considering the totality of the facts, the delay in filing the appeal be condoned.

6. On the issue of condonation of delay of appeal, I have gone through the sworn affidavit filed by the assessee and heard the Ld.A.R. It is an undisputed fact that there was delay of 1644 days. It is also a fact that assessee has pointed out that there was multiplicity of proceedings for the year under consideration. Assessee has also filed affidavit of the Manager (Accounts) and the Managing Director of the assessee company stating the reasons including frequent employee turnover handling the taxation related matters. On merits, it is Ld.A.R.'s contention that the issue is covered in assessee's favour by the decision of Hon'ble Bombay High Court.

7. I find that various Courts have held that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and that rendering substantial justice should be the paramount consideration rather than rejecting on hyper-technicalities. At this moment, it would be relevant to refer to the observations made by Hon'ble Bombay High Court in the case of Sitaldas K. Motwani & DGIT reported in (2010) 323 ITR 223 (Bom).

*“15.....The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit.*

*The expression "genuine" has received a liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice.”*

In the light of the aforesaid decision and in the absence of any material to demonstrate that the delay in filing the appeal was without malafide intention, I am of the view that the delay in filing the appeal by the assessee cannot be considered to be with malafide intention or was a deliberate on its part. Further even on merits, it is Ld.A.R.'s contention that the issue is covered in favour of assessee by the decision of Hon'ble Bombay High Court which fact has not been controverted by Revenue. Considering the totality of the aforesaid facts, I condone the delay and admit the appeal.

8. Before me, on the merits of issue, it was submitted that the issue involved in the appeal was with respect to non-granting of deduction of employees' contribution to Provident Fund u/s 43B of the Act. He submitted that Hon'ble Bombay High Court in the case of CIT Vs. Ghatge Patil Transports Limited (supra) has held that Section 43B of the Act is applicable to both the employees and employees contribution. I find that the Hon'ble Bombay High Court has held that

Sec.43B of the Act is applicable to employees and employee's contribution. Before me, it is assessee's contention that the employee's contribution of P.F. has been deposited with the appropriate authorities within the grace period allowed by the authorities and also before the filing of return of income. In such a situation, following the decision of Hon'ble Bombay High Court in the case of Ghatge Patil (supra), I am of the view that no disallowance is called for and assessee is eligible for deduction u/s 43B of the Act. I therefore direct accordingly. **Thus, the ground of assessee is allowed.**

9. **In the result, the appeal of assessee is partly allowed.**

Order pronounced on 16<sup>th</sup> day of October, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 16<sup>th</sup> October, 2019.

Yamini

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A)-1, Pune.
4. Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" /  
DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.